

Broadly construing Section 254(h)(2) promotes diversity of content and democratic opportunities. As observed by Mitchell Kapor:

In the long run, it will not be hundreds of channels or lines of video servers that promote diversity. It will be the ability of all participants in the national and international information infrastructure to be content producers as well as content consumers. . . . The Internet, with its non-hierarchical, peer-to-peer network architecture stands as a shining example of how to increase the diversity of information sources.^{57/}

If it is too costly to provide the latest telecommunications and information services to individuals in their homes through universal service subsidies, we can nevertheless promote democratic participation and free speech by ensuring that all citizens have access to advanced services through public institutions. Although cloaked in the guise of high technology, this goal is merely the latest incarnation of the traditional American support for provision of tools necessary for self-government and education.

In addition to supporting the goals of democratic participation and free speech, the construction of Section 254(h)(2) that we propose is in accordance with express language and legislative history of the Act.^{58/} The Conference Agreement states that the FCC is "given

^{56/}(...continued)

classrooms and libraries shall include dedicated data links and the ability to obtain access to educational materials, research information, statistics, information on Government services, reports developed by the Federal, State, and local governments, and information services which can be carried over the Internet.

^{57/} *Building Open Platforms*, *supra*, at 129.

^{58/} See CONFERENCE AGREEMENT, at 133:

The provisions of subsection (h) will help open new worlds of knowledge, learning and education to all Americans -- rich and

(continued...)

specific authority . . . to provide a different definition for schools, libraries, and health care facilities," and "is authorized to designate a separate definition of universal service applicable only to public institutional telecommunications users."^{59/} Moreover, the Conference Agreement notes that "[t]he ability of K-12 classrooms, libraries and rural health care providers to obtain access to advanced telecommunications services is critical to ensuring that these services are available on a universal basis."^{60/} The Conference Agreement also states that Section 254(h)(2) requires the FCC to establish rules to enhance the availability of advanced telecommunications and information services, such as "information services which can be carried over the Internet,"^{61/} to public institutional telecommunications users.^{62/} Furthermore, broadly construing the phrase "advanced telecommunications and information services" in Section 254(h)(2) fulfills the requirement that the FCC establish rules to enhance the availability of advanced telecommunications and information services to public institutional telecommunications users.^{63/}

^{58/}(...continued)

poor, rural and urban. They are intended, for example, to provide the ability to browse library collections, review the collections of museums, or find new information on the treatment of an illness, to Americans everywhere via schools and libraries. This universal access will assure that no one is barred from benefiting from the power of the Information Age.

^{59/} CONFERENCE AGREEMENT, at 131 & 133.

^{60/} *Id.* at 132.

^{61/} *Id.* at 133.

^{62/} *Id.*

^{63/} *Notice* ¶ 108 n.219.

IV. Conclusion

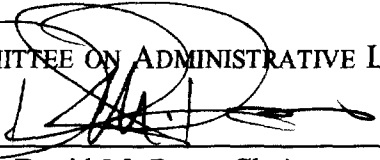
The Committee on Administrative Law of the Bar Association of the City of New York respectfully requests the Commission to adopt the positions set forth herein.

Respectfully submitted,

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK

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